IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRL.APPEAL NO. 534-DB of 1997

DATE OF DECISION : 10-1-2007

Dinesh & others … Appellants.

Versus.

State of Haryana … … Respondent

CORAM:- HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. R.S.Ghai, Sr. Advocate,
with Mr. Vinod Ghai, Advocate,
for the appellants

Mr. Kulvir Narwal, Addl. AG Haryana

…

JUDGMENT:

This appeal is directed against judgment dated 7/9.6.1997 passed by the Addl. Sessions Judge, Rewari, whereby in case FIR No. 10 dated 14.1.1996 u/s 302/506/120-B read with Section 34 IPC, Police Station Jatusana, District Rewari, the accused-appellants have been convicted under Section 302 read with Section 120-B IPC, for having committed the murder of Raj Singh and have been sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo imprisonment for a period of one year. Besides, accused Dinesh has also been convicted under Section 506 IPC for criminally intimidating Lillu Ram(PW9) and sentenced to undergo imprisonment for three months and also to pay a fine of Rs.500/- and in default of payment of fine, to further undergo imprisonment for three months.

In brief, the facts of the case, as unfolded by the prosecution, are that Lillu Ram son of Raj Singh, caste Ahir, aged 18/19

years, resident of village Jharoda was studying in 10th class. His father owned two killas of agricultural land in village Guriyani besides having a residential house there. In village Jharoda , there was a plot on the back side of their house, which was purchased by Banwari Lal son of Sultan from one Chunni son of Ishwar about 15 years ago but there was no passage to the said plot. On both sides of that plot, they were having their agricultural land. Banwari Lal had a talk with Raj Singh on a number of occasions for getting a passage to the plot but Raj Singh always ignored it. On 13.1.1996, at about 11 AM when both Lillu and Raj Singh were present at their village Guriani residence, Surender son of said Banwari Lal and one Sube Singh son of Lala Ram came there and took Raj Singh with them to village Jharoda on the pretext of having a talk with Raj Singh regarding the passage to the plot. Lillu Ram also reached village Jharoda of his own on a bicycle. At about 9.30 P.M. when Lillu Ram was studying in the Baithak of his house, his father Raj Singh and grand-father Ganpat, who was insane, were also sitting there. At that time, Surender and Sube Singh came there and took Raj Singh along with them by saying that Dinesh son of Banwari Lal is also present at the house and he wanted to have a talk in regard to the passage. However, after some time when Lillu Ram went to their house to call his father Raj Singh, he found the gate of the house of Dinesh closed and smoke emanating from the house. On hearing cries of his father Raj Singh, he raised an alarm “Mar-diya – Mar-diya” upon which his uncle Nand Lal arrived there and both of them then tried to open the door but failed in their efforts. They then pushed open the window of the house and on peeping in, saw Raj Singh lying on the earth with face downwards in the Poli (open space) burning in fire while Dinesh was dousing kerosene oil on his body. On hearing the noise, Sattan son of Ganpat and Chailu son of Kanha Ram arrived at the scene. Dinesh fled away from the spot saying that he had taught a lesson to Raj Singh for not providing the passage to the plot and further threatened Killu etc. with the same fate. In the meanwhile, a number of village gathered there and opened the gate of the house but by that time Raj Singh had died due to the burns. Since Raj Singh was murdered by Surender Sigh and Dinesh sons of Banwari Lal and Sube Singh son of Lala Ram with a criminal conspiracy, Lillu Ram went to the police station and informed it about the occurrence upon which his

statement was recorded and on the basis thereof, an FIR was registered.

Then, ASI Mohd. Hussain from Police Post,Nahar, pertaining to Police Station Jatusana went to the spot and prepared an inquest report. He also prepared the rough site plan besides recording the statements of the witnesses. Photographs of the spot were also arranged. Some ashes, cap of tin were also picked up from the spot for which recovery memo. was prepared. The dead body was sent to the General Hospital for post-mortem examination. The parcels handed over to constable Gurdial Singh by the doctor who conducted the post-mortem examination were also taken into possession vide a separate recovery memo. whereafter the same were deposited with the MHC.

Accused Dinesh, Surinder Singh and Sube Singh were later arrested on 16.1.1996 who during interrogation suffered disclosure statements at the time when tin used for kerosene oil, match-box used for setting the body on fire besides a bottle used for kerosene oil respectively, were got recovered by them. Accordingly, the recovery memo. of these articles was also prepared. Then opinion of the doctor was sought who opined that the death was caused due to burn injuries who were ante-mortem in nature to cause death in the ordinary course of nature. Subsequently, accused Smt. Ramphal was also arrested. On completion of requisite investigation, all the four accused persons were challaned. On commitment of the case, the learned Addl. Sessions Judge framed charges against the accused under Section 302/506/120-B IPC to which they pleaded not guilty and claimed trial.

In order to support its case, the prosecution examined, in all, 16 witnesses. Dr.M.K. Garg, Medical Officer, deposed as PW-1, having conducted the posrt-mortem examination on the dead body of Raj Singh and proved post-mortem report, Ex.PA. Khushi Ram, photographer, as PW-2, proved the photographs Ex.P1 to Ex.P9 along with their negatives Ex.P10 to Ex.P18. Constable Mohd. Harun appeared as PW-3 to state regarding delivery of special report to the Magistrate and PW-4 Naresh Kumar, draftsman-constable only prepared the scaled site plan,Exh.PD, whereas PW-5 Rohtash Singh, Head Constable, recorded the FIR Exhibit PE/1 on receipt of ruqa Ex.PE. Constable Gurdial Singh appeared as PW-6 stating that the parcels were handed over to him by the doctor who conducted the

post-mortem examination which were taken into possession vide memo. Ex.PF. Rameshwar appeared as PW-7 who stated that he had identifed the dead body of Raj Singh. Jage Ram appeared as PW-8 and deposed in regard to his having gone to the house of Smt. Ramphal and advising them to resolve their dispute within the family. Lillu Ram, complainant, himself appeared as PW-9 thereby narrating the entire incident as stated in FIR, Ex.PE. PW-10 Sat Narain, a partial witness, deposed having gone at the spot and seeing Dinesh accused pouring kerosene oil on the body of Raj Singh. Similarly, PW-11 Nand Lal, a partial witness, stated to be an eye-witness to the occurrence, deposed having seen Dinesh pouring kerosene oil on the body of Raj Singh who was burning with flames. The statements of Satish Kumar Constable as PW-12 and that of Laxmi Narain as PW-13 are of formal nature as they only tendered into evidence affidavits Ex.PG and Ex.PH with regard to limitation. PW-14 Chhote Lal deposed in regard to being a witness to the disclosure statements suffered by the accused. The Investigating Officer, Mohd. Hussain, ASI, appeared as PW-15 and deposed in regard to having conducted the investigation. The other Investigating Officer in the case, namely, Tula Ram, appeared as PW-16 and deposed having partly conducted the investigation. The prosecution then closed its evidence while relying upon the report of Forensic Science Laboratory, Madhuban, as Exhibit PQ.

Thereafter, statements of the accused under Section 313 Cr.P.C. were recorded by putting them incriminating evidence qua them to which they pleaded innocence and false implication.

The learned Additional Sessions Judge, Rewari, upon appreciation of evidence adduced on record, vide the impugned judgment and order held the accused guilty and convicted and sentenced all the four accused in the manner indicated above. Hence, the present appeal by the accused.

We have heard the learned counsel for the parties.

It has been urged by the counsel for the appellant that there is a delay in sending the special report to the Illaqa Magistrate which reached at 9.15 AM on the next day i.e. 14.1.1996 and as such, FIR is ante-timed which is fatal to the case of the prosecution. The contention is meritless. It

is not as if every delay in sending the special report to the Illaqa Magistrate would necessarily lead to the interference that the FIR has not been lodged at the time stated or has been ante-timed or that the investigation is not fair. If in a case, it is found that the FIR was recorded without delay and the investigation started on that FIR, then improper and objectionable the delayed receipt of the report by the Magistrate concerned, that cannot by itself justify the conclusion that the investigation was tainted and the prosecution unsupportable. In the instant case, the occurrence had taken place at about 10 PM on 13.1.1996. The statement, Ex.PE, of the complainant, PW-9 Lillu Ram was recorded at 11.15 PM at Police Post Nahar where he had gone after covering a distance of 7-1/2 kms. PW-15 ASI Mohd. Hussain who recorded his statement then made his endorsement Ex.PE/2 and sent the same to the Police Station Jatusana under whose jurisdiction the place of occurrence fell, which was again at a disance of 10 km. from Police Post Nahar and a formal FIR registered at P.S. Jatusana was recorded at 1.30 AM on the same night. By that time, the police swung into action and PW-15 ASI Mohd. Hussain reached the spot and started investigation. No doubt, special report reached the Illaqa Magistrate, Rewari at 9.15 AM, which is again at a distance of 25 kms. from P.S.Jatusana, through PW-3 Constable Mohd. Harun, but it cannot be ignored that it was night time in winter season and frequent conveyances are not available though P.S. Jatusana may be connected with metalled road of Rewari. In backdrop of this sequence of events, it cannot be said that the delivery of the special report was delayed; to say, it has affected the case of the prosecution.

The star witness in the case is PW-9 Lillu Ram son of the deceased Raj Singh. The other two witnesses, PW-10 Sat Narain and PW-11 Nand Lal have only partially supported the case of the prosecution. PW-9 Lillu Ram has reiterated the manner of occurrence as narrated by him in his statement Ex.PE before the police. However, he in his statement has stated that when Dinesh who was carrying a tin of kerosene oil was pouring the same on the body of his father Raj Singh, Surinder Singh was also there carrying a match-box, while Sube Singh, carrying a bottle of kerosene oil, was putting the same on the body of his father. The defence counsel has argued that PW-9 Lillu Ram has made improvement in his statement as

there is no mention by him in FIR, Ex.PE, with regard to Surinder Singh and Sube Singh having participated in the commission of crime. The argument is tenable. When a particular fact deposed to by a witness does not find mention in the FIR, it amounts to improvement unless the witness gives a plausible explanation for such an omission which is missing in this case, though it is claimed that the supplementary statement of Lillu Ram (PW-9) was recorded wherein he named them as well as Smt. Ram Phal mother of Dinesh accused. No such supplementary statement of Lillu Ram has been exhibited along with Exhibit PE enabling the defence to confront the witness. Merely because Surinder Singh and Sube Singh had taken Raj Singh to the house of Dinesh accused in order to have a talk with regard to the passage, does not lead to the conclusion that they were also present at the time of the occurrence. Further, had Surinder Singh and Sube Singh been present at the time of occurrence, in that eventuality Lillu Ram would have said that Surinder Singh and Sube Singh had also escaped from the spot along with Dinesh after the commission of crime whereas PW9 Lillu Ram has only named Dinesh having escaped from the spot while giving a threat that they will also meet the same fate. This lends to an inference that PW9 Lillu Ram has made improvement to say that Surinder Singh and Sube Singh were also present at the time of commission of crime. The matter does not rest here. There is also evidence of PW-10 Sat Narain and PW-11 Nand Lal. No doubt, they have been declared hostile by the prosecution but this does not result in automatic rejection of their evidence. Even the evidence of a hostile witness if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. A bare perusal of their statements does not suggest the presence of Surinder Singh and Sube Singh accused at the time of occurrence. Undoubtedly, PW-10 Sat Narain and PW-11 Nand Lal have stated about the presence of Smt. Ram Phal but her participation in the commission of crime is also not proved beyond doubt as PW-9 Lillu Ram, the star witness of the case, has no where stated with regard to Smt. Ram Phal's presence or having participated in the commission of crime. She being the mother of Dinesh accused, has to be present in the house. Even the statement of PW-10 Sat Narain suggests that Smt. Ram Phal was standing in the court-yard of the house though it is the clear cut case of the prosecution that the occurrence

had taken place inside the house and in this backdrop of the facts, it cannot be said that Smt. Ram Phal shared any common intention with her son Dinesh in the commission of crime. Therefore, the prosecution has not been able to prove its case against Surinder Singh, Sube Singh and Smt. Ram Phal beyond reasonable doubt. They are thus, acquitted of the charges.

However, there is an over-whelming evidence against accused Dinesh as deposed by PW-9 Lillu Ram, PW-10 Sat Narain and PW-11 Nand Lal. Merely because some of the accused have been acquitted on the basis of the said evidence, the same does not lead as a necessary corrolary that the same benefit be given to accused Dinesh as the case of the acquitted accused has been differentiated from the case of accused Dinesh, as discussed above. The statements of the said witnesses are corroborative so far as participation of Dinesh accused in the commission of crime is concerned. Counsel for accused-Dinesh has not been able to point out any thing from the record in order to reject their statements qua accused-appellant Dinesh. Arguments have been advanced that as per PW-9 Lillu Ram, the accused including Dinesh had thrown kerosene oil, match-box and bottle of kerosene oil at the spot but the same are shown to have been recovered by virtue of their disclosure statements followed by recovery memos. To our mind, this does not help the defence in any manner so as to discredit the statement of PW-9 Lillu Ram so far as accused-appellant Dinesh is concerned, in the commission of crime coupled with the statement of PW-10 Sat Narain and PW-11 Nand Lal. The medical evidence also supports the ocular account.

Consequently, in view of the discussion above, the appeal qua accused-appellant Dinesh is dismissed.

(ARVIND KUMAR)
JUDGE

(MEHTAB S. GILL)
JUDGE

January 10, 2007
JS